

HSE HR Circular 027/ 2014

12th December 2014

**To: Each Member of the Directorate and Leadership Team HSE
Each ISA Manager, HSE
Each Assistant National Director, HR
Each Employee Relations Manager, HR, HSE**

Re: Sleepovers – Payments

Dear Colleagues,

I wish to advise that the Departments of Health and Public Expenditure and Reform have authorised a new rate of payment for 'Sleepovers' undertaken by social care staff in the Intellectual Disability and Children & Families sectors, (circular 15/2014 refers). The new rate, applicable from September 18th 2014, arises from the provisions of LCR 20837.

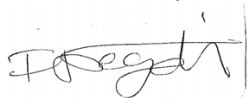
The rate of payment to apply is the minimum wage rate (currently 8.65 per hour) for such sleepovers, amounting to €69.20 per 8 hour sleepover. The HSE has made provisions for the funding of this increase in its 2015 service plan. It should be noted that the other aspects of the arrangements relating to 'Sleepovers' such as 8 hour duration between the hours of 8pm and 8am remain in place.

All agencies are requested to take the necessary action to put these new arrangements in place as soon as possible.

Queries from HR and Employee Relations in relation to this matter should be referred to Employee Relations Advisory and Assurance, HSE HR Directorate, 63/64 Adelaide Road, Dublin 2. Tel: 01 6626966; Email: info.t@hse.ie

Individual employees who have queries in relation to the application of this Circular must contact their local HR/Employee Relations Department.

Yours sincerely,



Ian Tegerdine
National Director of Human Resources

Encl.



Circular 15/2014

20 November 2014

Mr. Barry O'Brien
National Director of Human Resources
Health Service Executive
Dr. Steevens' Hospital
Dublin 8

Sanction to implement Labour Court Recommendation concerning sleepovers

Dear Barry,

As you know, the Labour Court has recommended that staff working in residential care centres in the intellectual disability sector should be paid the minimum wage during residential sleepovers and that major restructuring of the way in which such services are delivered be undertaken in order to bring about compliance with working time legislation in this sector (LCR20837).

The Minister for Health and the Minister for Public Expenditure and Reform have now given their approval to adopt this recommendation. Accordingly, I wish to confirm sanction to the payment of the minimum wage rate (currently €8.65) for each sleepover hour worked in residential care by staff in the intellectual disability sector with effect from 18 September 2014. I note the HSE has made provision for the funding of this increased payment in the draft 2015 Service Plan.

I also note that the first meeting of the working group, which will develop a plan for the restructuring of services, has taken place. I understand that meetings of a subgroup involving HR managers and unions are planned to take place shortly and that the implications of the recommendation for a number of pilot areas will be examined in detail and will be used to draw up a national framework of restructuring options.

It is vital that the HSE Social Care Directorate is involved in this subgroup process and leads on the development of the national framework of restructuring options. It is also essential

that the cost implication of all restructuring options are considered in detail and every effort is made to develop cost effective options that also provide for a safe good quality service to clients. Given the tight timeline given to the providers by the Labour Court to comply with the European Working Time Directive and the requirement that the Department respond to the European Commission's letter of formal notice on this matter by mid-December, it is requested that the proposals resulting from these engagements are submitted to this Department by Wednesday, 10th December.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lara Hynes', written in a cursive style.

Lara Hynes
Principal Officer
National HR Unit

cc. Pat Healy, National Director, Social Care Dr Steevens' Hospital, Dublin 8

CD/14/266
(CCC-130492-13)

RECOMMENDATION NO. LCR20837

INDUSTRIAL RELATIONS ACTS, 1946 TO 2012
SECTION 26(1), INDUSTRIAL RELATIONS ACT, 1990

PARTIES : _____

HEALTH SERVICE EXECUTIVE

- AND -

IRISH MUNICIPAL, PUBLIC AND CIVIL TRADE UNION
SERVICES INDUSTRIAL PROFESSIONAL TECHNICAL UNION
UNITE THE UNION

DIVISION :

Chairman	:	Mr Duffy
Employer Member	:	Ms Doyle
Worker Member	:	Mr McCarthy

SUBJECT:

1. The terms under which social care workers and related grades are employed in the Child Care and Intellectual Disability Sector.

BACKGROUND:

2. This dispute concerns the operation of sleepover arrangements in both the Childcare and Intellectual Disability Sectors. Sleepover refers to a continuous period of usually 8 hours between the hours of 8pm and 8am and is in addition to the normal contracted average weekly working hours for the grades. The Employer said the requirement to undertake sleepovers is an integral element of the contracts of employment of staff working in these sectors and is the accepted custom and practice. The Unions said that sleepover time is regarded as working time and that it should be paid at the appropriate rate in accordance with existing norms within the health sector and the wider public sector. This dispute could not be resolved at local level and was the subject of a Conciliation Conference under the auspices of the Labour Relations Commission. As agreement was not reached, the dispute was referred to the Labour Court on the 10th July 2014, in accordance with Section 26(1) of the Industrial Relations Act, 1990.

A Labour Court hearing took place on the 11th September 2014.

UNION'S ARGUMENTS:

3. 1. Working time is defined as any period during which the worker is working at the employer's disposal and carrying out his/her activities or duties in accordance with national hours of practice.
2. Sleepovers involve the workers working significantly in excess of 48 hours per week which is the maximum number of weekly working permitted under the Act of 1997.
3. The organisation of sleepovers does not permit the taking of breaks at work. Sleepovers are overtime and should be remunerated as such.

EMPLOYER'S ARGUMENTS:

4. 1. It is the employers' position that the Unions' claims are cost increasing and cannot be conceded within the terms of agreements and legislative provisions governing public service pay.
2. The employers accept that sleepovers counts as working time but this does not extend to remuneration levels to be paid for the sleepovers.
3. The concession of the Unions claim would cost the service an additional €60 million euro per annum.

RECOMMENDATION :

This dispute concerns the terms under which 5,500 social care workers and related grades are employed in the Child Care and Intellectual Disability Sector. They undertake their caring duties in a residential setting which provide a service over 24 hours seven days per week. Having regard to the nature of the service provided those associated with these claims are required to 'sleepover' at their place of employment on a number of occasions during their working week.

The Claimants are employed by the HSE and other organisations funded by the HSE out of public funds.

Currently sleepovers are not treated, for pay purposes, as part of the Claimants' working time. They are paid an allowance for each sleepover the value of which is significantly less than their normal pay in respect of an equivalent period of ordinary working time. Each sleepover involves a continuous period of eight hours between 8pm and 8am. The Claimants currently undertake up to three sleepovers per week.

The origin of the dispute lies in decisions of the Court of Justice of the European Union (formally the ECJ) which held that for the purpose of Directive 93/104/EC on the Organisation of Working Time (now Directive 2003/88/EC) time spent by workers at their place of work during which they remain liable to be called upon to perform the duties of their employment is to be regarded as working time. The Directive is transposed in Ireland by the Organisation of Working Time Act 1997.

The Unions contend that the combined duration of ordinary work and sleepovers involves the Claimants in working significantly in excess of 48 hours per week which is the maximum number of weekly hours working permitted under the Directive and the Act of 1997. They further claim that the organisation of their working time does not permit the taking of breaks and intervals at work as are prescribed by the Directive and the Act. They also claim that sleepovers are overtime and should be remunerated as such.

The employers accept that sleepovers must now be regarded as working time. However, they point to the operational difficulties in changing long established working patterns within which they provide services to those in their care. They also point out, correctly, that neither the Directive nor the Act deals with questions of pay. It is the employers' position that the Unions' claims are cost increasing and cannot be conceded within the terms of agreements and legislative provisions governing public service pay.

Issues in Dispute

In the course of conciliation a list of 10 items claimed by the Unions were identified as constituting the central issues in dispute. They were set out by the IRO as follows: :-

- 1. "Staff contracts are for 39 hours per week and pro rata if not fulltime**
- 2. Sleepovers count as working time**
- 3. Average maximum that can be worked is 48 hours per week**
- 4. Staff are not legally required to work beyond their contracted hours**
- 5. Staff are entitled to 11 hours rest in each 24 hour period or equivalent compensatory rest**
- 6. Staff are entitled to a 15 minute break away from work after working 4 hours and 30 minutes**
- 7. Staff are entitled to a 30 minute break away from work after having worked for 6 hours**
- 8. Staff are entitled to be paid overtime for hours worked outside their contract hours**
- 9. Staff are entitled to be compensated for the fact that the employer knowingly broke the working time directive**

10. Staff are entitled to have the appropriate rate of pay for hours worked outside of normal hours paid retrospectively”

Approach of the Court

This dispute was referred to the Court under section 26(1) of the Industrial Relations Act 1990. Consequently, the Court’s role is to assist the parties in finding a practical and fair industrial relations basis upon which the dispute should be resolved. Having regard to the legislative basis under which the dispute is before it, the Court cannot and does not purport to resolve any differences between the parties concerning the interpretation of either the Directive or the Act of 1997. According, nothing in the recommendations that follow should be understood as addressing those issues or purporting to define the legal rights and duties of the parties under either the Directive or the Act.

Recommendations

Having considered the submissions of the parties, and having had the benefit of discussing their respective positions with them in side session, the Court recommends that the dispute should be resolved on the following basis:

1. **Basis terms of employment**
All parties should acknowledge that: -
 - (a) **The standard working week of the Claimants is 39 hours.**
 - (b) **The established custom and practice in the employments concerned is that those associated with this dispute have an obligation to provide services by way of sleepover and that obligation should continue.**
 - (c) **Time spent on sleepovers should be acknowledged as constituting working time.**
 - (d) **Like all other workers who are encompassed by the legislative provisions on working time the maximum weekly hours worked by the Claimants should not exceed 48. However, this can only be achieved through the process recommended at 3. below**
 - (e) **Like all other workers the Claimants are entitled to the breaks and intervals at work prescribed by relevant legislation.**
2. **Payment for Sleepovers**

Having regard to all the circumstances currently prevailing, the Court recommends that, with effect from the date of this Recommendation, staff should be paid an hourly rate in respect of each hour spent on sleepover in excess of 39 hours equal to the national minimum hourly rate.

3. **Restructuring working time**

It is clear that a major restructuring of the way in which the services of those associated with these claims is delivered will have to be undertaken in order to bring about full compliance with the legislative requirements concerning working time. This is acknowledged by all parties. Discussions and negotiations have taken place with that in view but no agreement has so far been reached.

The Court is not in a position to make detailed recommendations at this time on how that reorganisation should be achieved. That is a matter which will have to be addressed by the parties themselves who are best placed to know what is required so as to continue providing the current level of service within the working time parameters identified in this Recommendation.

The Court recommends that the parties return to conciliation and that they engage in an intensive process directed at agreeing mechanisms by which full compliance with the legislative requirement can be achieved while maintaining current levels of service provision. That process should continue for a period not exceeding nine months or such longer period as may be agreed.

The parties should report to the Court on progress in these discussions at three monthly intervals. Any disagreement or other difficulties encountered that could inhibit or delay final agreement should be referred back to the Court. The Court will, if necessary, issue further recommendations directed at assisting the parties to complete this process within the timeframe envisaged by this Recommendation.

4. Other Matters

The Court does not recommend concession of the claims at points 9 and 10 of the list of items referred to above.

Signed on behalf of the Labour Court

Kevin Duffy

Chairman

CR

18th September, 2014.

NOTE

Enquiries concerning this Recommendation should be in writing and addressed to Ciaran Roche, Court Secretary.

